

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.6910 OF 2014.

Urdu Education Society, Akola thr. its Secretary and ors.

..VS..

The State of Mah. thr. its Secretary, Deptt. of Education, Mantralaya Mumbai and ors.

WRIT PETITION NO.6847 OF 2014.

Urdu Education Society, Akola thr. its Secretary and ors.

..VS..

The State of Mah. thr. its Secretary, Deptt. of Education, Mantralaya Mumbai and ors.

WRIT PETITION NO.6907 OF 2014.

Urdu Education Society, Akola thr. its Secretary and ors.

..VS..

The State of Mah. thr. its Secretary, Deptt. of Education, Mantralaya Mumbai and ors.

WRIT PETITION NO.6909 OF 2014.

Urdu Education Society, Akola thr. its Secretary and ors.

..VS..

The State of Mah. thr. its Secretary, Deptt. of Education, Mantralaya Mumbai and ors.

WRIT PETITION NO.6935 OF 2014.

Urdu Education Society, Akola thr. its Secretary and ors.

..VS..

The State of Mah. thr. its Secretary, Deptt. of Education, Mantralaya Mumbai and ors.

WRIT PETITION NO.7132 OF 2014.

Urdu Education Society, Akola thr. its Secretary and ors.

..VS..

The State of Mah. thr. its Secretary, Deptt. of Education, Mantralaya Mumbai and ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr.A.A.Naik, Advocate for the petitioners.
Mr.S.M.Ukey, AGP for respondent nos.1 to 3.

**CORAM : B.P.DHARMADHIKARI AND
P.N.DESHMUKH, JJ.**

DATED : AUGUST 31, 2015.

1. Petitioner no.1 – Management as also its staff is before this Court for quashing the communication dated 31st of December, 2013

sent by office of Education Officer – respondent no.2, rejecting proposals submitted by petitioner no.1 for approval to the services of four teachers. The impugned order states that the appointments have been made contrary to orders passed in First Appeal No.423 of 1994 and without obtaining prior permission of the department.

2. Advocate Shri Naik submits that petitioner no.1 is a minority institution and hence provisions of The Right of Children to Free and Compulsory Education Act, 2009 are not applicable to it. According to him, therefore the new norms of staff justification cannot be applied and the staff justification as proposed by petitioner no.1 i.e. Treating standards 8th to 10th as a Unit needs to be considered. He further states that minutes of orders dated 6th of December, 2004 in First Appeal No.423 of 1994 at the most may have a prospective effect and appointments made prior thereto cannot be regulated by it. He adds that condition No.6 therein also cannot be construed as militating with a minority status of petitioner no.1.

3. Learned counsel submits that in 1993 appointments of 122 teachers were made and as approval to their employment was rejected in lot, in a civil suit a decree for an amount of Rs.1,02,39,526/- came to be passed against the government. This decree was challenged by Education Officer in First Appeal No.423 of 1994 and in that First Appeal, the compromise was entered into on 6th of December, 2004.

4. According to him, eligible persons out of these 122 have already been provided employment and the others have either not reported or found not eligible. As such against available vacancies, new recruitment has been done from 1996 onwards. It is contended that this recruitment is in accordance with law and prior approval is not required as petitioner no.1 is minority institution.

5. Learned counsel further states that as petitioners were not extended an opportunity of hearing, all these niceties could not be explained to the Education Officer. He further points out that to look into these appointments a Committee by name, Khatib Committee was appointed by State Government and that Committee after due evaluation, submitted its report in favour of the petitioner no.1 which has not been considered by respondent no.1 – Education Officer.

6. Learned Assistant Government Pleader submits that Education Officer has found one reason sufficient to reject the proposals and therefore, he has not given several other reasons, which have been placed for consideration before this Court. According to him, the subsequent recruitment is also not in accordance with law and he has produced a Chart which gives details of 42 appointments. That chart is taken on record and marked as Exh. 'X'. He states that out of total 42 appointments in this chart, only 10 appointments are prior to 6th of December, 2004 and all other appointments therefore are contrary to terms and conditions of the orders of this Court in First Appeal No.423 of 1994. Learned Assistant Government Pleader has also pointed out that proposal allegedly submitted by Management earlier were not containing names of petitioners before this Court.

7. After hearing respective counsel we find that impugned order gives only two reasons for not approving the services and for rejecting the proposals. Other reasons do not figure therein. The orders also show that appointments prior to 6th of December, 2004 have been evaluated at par with other appointments after that date. Hence, non-application of mind is apparent.

8. The impugned order also does not even mention report of Khatib Committee.

9. The issue of approval needs to be basically looked into by respondent no.2 and hence it will not be proper on our part to evaluate report of Khatib Committee and examine its relevance. It would also not be necessary for us to comment on the rights of petitioner as a minority institution qua the provisions of above mentioned 2009 Act.

10. Interest of justice can be met with by restoring all proposals back to file of respondent no.2 for its fresh consideration in accordance with law. We direct petitioners before this Court to assist respondent no.2 in the matter.

11. Petitioner no.1 – Management and Headmasters of concerned schools shall appear before respondent no.2 - Education Officer on 14th of September, 2015 and abide by its further instructions in the matter. Said Officers shall thereafter call for relevant records, examine the issues of entitlement, eligibility and privileges considering the minority status of petitioner no.1 and take suitable decision afresh on all aspects of the matter within next three months.

12. Accordingly, we quash and set aside order dated 31st of December, 2013 at Annexure 'H'. Keeping all rival contentions open, we dispose of this Writ Petition.

13. Writ Petition is thus partly allowed. No costs.

JUDGE

JUDGE

Chute.